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ATTORNEY FOR APPELLANT:

DANIEL E. HENKE
Noblesville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

NATHAN LEE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 29A04-0712-CR-00693
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HAMILTON COUNTY SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-9803-CF-26

July 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Nathan Lee appeals the revocation of his probation and the execution of his previously suspended sentence. Lee presents the following restated issues for review:

1. Was Lee's probation already revoked at the time he committed the violation upon which the instant revocation was based?
2. Did the revocation court err in executing the entire term of the suspended sentence?

We affirm.

The facts favorable to revocation are that on May 3, 2000, Lee pleaded guilty to dealing in a schedule I controlled substance as a class B felony. He was sentenced to ten years in prison with five years suspended, three to probation. On January 12, 2005, a petition to revoke Lee's probation was filed alleging he had failed to report to the probation department and that he had been arrested and charged with two counts of theft. Lee admitted violating probation at a subsequent revocation hearing. Following the hearing, on September 29, 2005, the court issued the following order on revocation:

The original sentencing order of May 25, 2000 is hereby modified to show that the defendant is ordered to serve the remaining five years of the sentence in the Indiana Department of Correction. ... The executed portion of the sentence shall be served as two (2) years in the Hamilton County Community Corrections through Work Release and complete any and all programs that are made available to him in the community corrections. The remaining three years shall be served through the Clark County Community Corrections in whatever daily reporting program they have available and remain gainfully employed while in that program. ... Defendant shall remain on probation until a bedspace becomes available in the Hamilton County Community Corrections Facility, upon reporting to Work Release, his probation shall be revoked.

Transcript at 109-110. Lee failed to report to the probation department on January 10 and 23, February 7 and 22, and March 2, 2006. A second revocation petition was filed on March 2, 2006, alleging Lee's failure to report on the above dates. At a hearing on the second

petition, Lee admitted he did not report on the days indicated. He explained that he had called the Hamilton County Community Corrections Facility and was told there were no beds available. At the conclusion of the hearing, the court revoked Lee's probation and executed his entire sentence. Lee appeals that ruling.

Pursuant to Ind. Code Ann. § 35-38-2-3(a) (West, PREMISE through 2007 1st Regular Sess.), "[t]he court may revoke a person's probation if: (1) the person has violated a condition of probation during the probationary period...." The State must prove the violation of a probation condition by a preponderance of the evidence. I.C. § 35-38-2-3(e). "We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion." *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Abernathy v. State*, 852 N.E.2d 1016 (Ind. Ct. App. 2006).

Lee's argument that the trial court erred in revoking his probation is a technical one. He contends he was not on probation after September 29, 2005 because it had already been revoked, and therefore he did not have a duty to report to the probation department on the days in question, all of which occurred after September 29. Essentially, he contends he could not have violated probation because he was no longer on probation. The argument misrepresents the court's September 29, 2005 order. The final sentence in the order states, "Defendant shall remain on probation until a bedspace becomes available in the Hamilton County Community Corrections Facility, upon reporting to Work Release, his probation shall

be revoked.” Pursuant to this portion of the order, Lee was to remain on probation until a bed became available at the Hamilton County Community Corrections Facility, at which time his probation would be revoked. Lee testified at the revocation hearing that he had been advised there were no beds available at the Hamilton County Community Corrections Facility the last time he called. Thus, by the terms of the September 29 order, he was still on probation during the relevant time period. Lee offers no other challenge to the finding of violations. The trial court did not err in finding that Lee violated the conditions of his probation.

2.

In his second designated “issue”, which actually consists of two separate issues and a sub-issue, presented in shotgun fashion, Lee claims the revocation court did not state the basis for revoking probation, did not properly weigh mitigating factors presented by Lee, and erred in executing the previously suspended portion of his sentence. Lee’s entire argument under this section of his brief (i.e., issue 2) is as follows:

In the present case, the Court did not adequately state reasons for the revocation, and did not give proper weight to the mitigating factors presented by Lee. Lee presented valid reasons why he did not begin the executed sentence as previously ordered by the Court. Having been brought before the Court, the Court should have [o]rdered Lee remanded for service of his Community Corrections commitment.

Appellant’s Brief at 8. This is not so much a discussion of the issues as it is a listing of them.

The mere assertion of the legal conclusions that the trial court erred in these respects, bereft of cogent argument or citation to authority, does not satisfy Lee’s burden on appeal. *See* Ind. Appellate Rule 46(A)(8)(a)&(b) (providing that appellant’s contentions regarding the issues

presented on appeal must be supported by cogent reasoning and by citations to authorities and statutes); *see also Canaan v. State*, 683 N.E.2d 227, 232 (Ind. 1997) (concluding that the defendant waived appellate review of his claim of ineffective assistance of trial counsel where defendant made only a “conclusory statement” as to the effect of trial counsel’s failure to object without providing supporting argument or authority), *cert. denied*. These arguments are waived.

Even were they not waived, however, the arguments are without merit. Our review of the record reveals: (1) the trial court did state the reasons for revocation, i.e., “the Court finds that the defendant has in fact violated his ... probation”, *Appellant’s Appendix* at 126, based upon Lee’s admission that he failed to report on the dates alleged); and (2) the court did not err in revoking probation; *see Stephens v. State*, 818 N.E.2d 936 (Ind. 2004) (if it finds the probationer violated a condition of probation, the court may order execution of any part of the sentence that was suspended at the time of initial sentencing).

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur